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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL CASILLAN,

Defendant and Appellant.

D041949

(Super. Ct. No. SCD169788)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Judge. Affirmed.

After the court denied a motion to suppress evidence (Pen. Code, § 1538.5),¹ Michael Casillan entered negotiated guilty pleas to transporting a controlled substance (Health & Saf. Code, § 11379, subd. (a)) being a felon in possession of a firearm (§ 12021, subd. (a)(1)), and driving under the influence of alcohol or a controlled

¹ All statutory references are to the Penal Code unless otherwise specified.

substance (Veh. Code, § 23152, subd. (a)). He admitted a prior strike (§§ 667, subds. (b)-(i), 1170.12, 668). The court sentenced him to prison for six years: double the three-year middle term for transporting a controlled substance with a strike prior. It imposed concurrent terms on the remaining convictions. The record does not include a request for a certificate of probable cause. (Cal. Rules of Court, rule 31(d).)

FACTS

Around noon on September 5, 2002, San Diego police officers, on patrol, saw the car Casillan was driving drift into the oncoming lane and then jerk back to the right to avoid a collision with an oncoming vehicle. The officer stopped the car Casillan was driving and saw multiple symptoms of him being under the influence of drugs. They arrested Casillan and, while searching the car, found in the interior a baggie containing white powder and a firearm in the engine compartment.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as a possible but not arguable issue whether the trial court erred in denying the motion to suppress evidence.

We granted Casillan permission to file a brief on his own behalf. He has responded and has moved for appointment of counsel to pursue a petition for writ of habeas corpus. In his supplemental brief, Casillan contends he was denied effective assistance of both trial counsel and appellate counsel. He claims he was not driving

erratically and the officers stopped him to "conduct a racially profiled stop," and because he "looked like a gang-banger." Nothing in the record supports this argument. To the contrary, the officers testified they stopped Casillan after he drove into oncoming traffic. The court believed the officers. We must not usurp the trier of fact's assessment of credibility. (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12.)

Casillan claims his trial counsel failed to adequately investigate, failed to seek discovery on the credibility of the officers when reasonable counsel would have done so, and coerced him into entering the guilty pleas. The record includes no information on any of these claims. When reviewing an appeal we are limited to the record before us. (*People v. Jackson* (1964) 230 Cal.App.2d 485, 490; *People v. Roberts* (1963) 213 Cal.App.2d 387, 394.) "[I]f the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation, the claim on appeal must be rejected. [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding." (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Casillan also contends he was denied effective assistance of appellate counsel in not challenging the competency of trial counsel. To prove ineffective assistance of appellate counsel, the defendant has the burden of showing counsel on appeal failed to raise an issue that might have resulted in reversal. (*In re Smith* (1969) 3 Cal.3d 192, 202-

203.) Here, as noted, the record does not support the claim that Casillan's appellant counsel failed to adequately represent him.

Casillan also requests appointment of counsel to assist him in filing a petition for a writ of habeas corpus, for stay of this appeal until the habeas corpus proceeding is completed, and for discovery on the arresting officers. There is no constitutional right to appointment of counsel in a habeas corpus proceeding. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.) In making his request for appointment of counsel, Casillan cites title 18 United State Code section 3006A(a)(2)(B). Title 18 United States Code section 3006A(a)(2)(B) provides that the federal court may appoint counsel to assist a defendant in a federal habeas corpus proceeding. This section does not pertain to a habeas corpus petition in state court. In California, counsel must be appointed to assist an indigent defendant to file a petition for writ of habeas corpus once he has made "adequately detailed factual allegations stating a prima facie case." (*People v. Barton* (1978) 21 Cal.3d 513, 519, fn. 3.) If Casillan chooses to pursue this matter through a petition for writ of habeas corpus in the trial court, he should make the appropriate showing there to support his request for appointment of counsel on the habeas corpus petition.

We decline Casillan's request we hold his appeal is abeyance until he completes a federal habeas corpus proceeding since he cannot proceed with the federal habeas proceeding until he has exhausted his state remedies. (28 U.S.C. § 2254(b).) His appeal and any habeas corpus petition he chooses to pursue in state court must be exhausted before the federal court will consider a federal habeas corpus petition.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Casillan on this appeal.

DISPOSITION

The judgment is affirmed. Casillan's motions are denied.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.